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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,993	06/27/2003	Werner Pfaller	88265-6500	6416

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BELL, BOYD & LLOYD LLC  
P. O. BOX 1135  
CHICAGO, IL 60690-1135

EXAMINER
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BECKER, DREW E

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 06/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/608,993	PFALLER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Drew E. Becker	1761	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 April 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 13-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/27/03</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Priority*

1. Acknowledgment is made of applicant's claim for foreign priority based on a PCT application filed in Europe on 12/11/2001. It is noted, however, that applicant has not filed a certified copy of the PCT application as required by 35 U.S.C. 119(b).

### *Election/Restrictions*

2. Claims 13-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 4/14/06.

### *Double Patenting*

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-12 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 5,997,934.

Although the conflicting claims are not identical, they are not patentably distinct from each other because cooker-extruders were simply a type of heat exchanger.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. The phrase "properties which are similar to those of a roller dried product" in claim 1 is a relative phrase which renders the claim indefinite. The phrase is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is not clear what degree of difference, or even which properties, would be considered "similar".

8. The phrase "similar to those of a roller dried product" in claim 6 is a relative phrase which renders the claim indefinite. The phrase is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one

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of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is not clear what degree of difference would be considered "similar".

9. Claims 1-2 and 6 recite "organoleptic properties... which are superior to those of an extruded product that is subject to pressure and friction" or "similar to those of a roller dried product that is not subjected to stress during manufacture". It is not clear which properties are being referred to. It is not clear whether the applicant's process requires pressure, friction, and stress, or whether they are excluded.

10. Claim 3 recites a "gelatinization degree of at least 9% in the extruded product". It is not clear whether this limitation should be applied to the cooked mixture as done in parent claim 1.

11. Claim 6 recites "intermediates". It is not clear what an intermediate is.

12. Claim 12 recites "it". It is not clear what "it" is.

### ***Claim Rejections - 35 USC § 102***

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

14. Claims 1-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Geromini et al [Pat. No. 5,997,934].

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Geromini et al teach a method for making cooked cereals or dry pet food by preparing a mixture of water and dry premix comprising mainly cereal flour or semolina (column 1, line 60), pressing the mixture using a gear pump with two toothed wheels which mesh and inherently avoid shearing (Figure 1, #3 & 9), forcing the mixture into a heat exchanger and through an extrusion die (Figure 1, #2 & 4), cooking in the heat exchanger to provide a gelatinization degree of at least 95% (column 2, line 4), the extruded product inherently having similar properties to a roller dried product, the gear pump inherently imparting superior organoleptic properties, the extruded product inherently possessing an expansion degree of 2 to 6, the extruded product inherently possessing a starch profile of 40-70% amylopectin, 5-22% intermediates, and 15-35% amylose, the mixture having a water content of 10-40% (column 2, line 45), the premix containing at least 50% cereal flour or semolina (column 2, line 10), a pressure of 100-1,000 kPa upstream of the gear pump (column 3, line 4), a pressure of 2,000-20,000 kPa downstream of the gear pump (column 3, line 5), and cooking to 80-200°C for 20 seconds to 180 minutes (column 2, line 50).


15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sasaki et al [Pat. No. 5,198,261], Battaglia [Pat. No. 6,866,878], Hughes [Pat. No. 4,230,503], Lihotzky-Vaupel [Pat. No. 6,338,867], Hauser et al [Pat. No. 6,551,645], Boatman et al [Pat. No. 5,538,748], and Fulger et al [Pat. No. 4,568,550] teach methods of mixing and heating foods.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
**DREW BECKER**  
**PRIMARY EXAMINER**  
6-21-06